

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 97-91  
Table of Allotments, ) RM-8854  
FM Broadcast Stations )  
(Lewisville, Gainesville, Robinson, )  
Corsicana, Jacksboro, and )  
Mineral Wells, Texas) )

To: Chief, Allocations Branch

**COMMENTS OF**  
**JERRY SNYDER AND ASSOCIATES, INC.**

Jerry Snyder and Associates, Inc. ("Snyder"), licensee of KYXS, Mineral Wells, Texas, by its attorneys, hereby respectfully submits its Comments in response to the above-referenced *Notice of Proposed Rule Making and Order to Show Cause* (the "*N.P.R.M.*") filed by Heftel Broadcasting Corporation ("Heftel") in the above-captioned proceeding (the "Heftel Petition"). In regard thereto it is stated as follows:

I. **Preliminary Matter**

At paragraph 12 of the *N.P.R.M.*, the Commission directs Snyder to "File a written statement showing with particularity why their authorizations should not be modified as proposed in the *Order to Show Cause*."<sup>1</sup> But modification of KYXS' license

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<sup>1</sup> In *FM Allocations - Mineral Wells, Texas*, 7 FCC Rcd 1791, ¶4 ("*Mineral Wells*"), the FCC modified the license of KYXS-FM to specify operation on Channel 240C1. However, that modification was subject to certain preconditions. One of these was that the licensee file a Form 301 application for a construction permit. That permit expired because the condition was not met. Snyder lost site availability at that time.

to specify operation as a Class C3 FM facility strictly speaking is not what Heftel seeks in this proceeding. Station KYXS is already operating as a Class C3 facility. Thus, no physical change in KYXS' facility would be required were the Heftel proposal to be adopted. Therefore, in this regard 47 C.F.R. §1.87 is inapplicable.

II. **The Public Interest Determination that Channel 240C1 Should Be Allotted to Mineral Wells, Texas Should Not Be Disturbed.**

Snyder has pursued for many years and at great expense the goal of maximizing the facilities of KYXS. *See, Table of FM Allotments - Mineral Wells, Texas*, 7 FCC Rcd 1791 (Chief, Allocations Branch, 1992). Thereafter, Snyder applied for and received a construction to build the facility at a site where a tall tower would be permissible. Upon the death of the property owner, Snyder lost the use of the site. Loss of site is not uncommon in FCC filings because of the passage of time between the original filing and receipt of the construction permit. *See, Evergreen Broadcasting Company*, 6 FCC Rcd 5599, 5603 (1991).

On November 25, 1996, Snyder having recently acquired reasonable assurance from the new site owner filed a virtually identical application for the C1 facility. In his declaration (attached hereto),<sup>2</sup> Snyder explains that upon the death of the property owner his heirs would no longer honor the deceased's commitment to lease the property to Snyder. After that large piece of property was sold subsequently to the Palo Pinto County Municipal Water District for a reservoir, Snyder discovered that the

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<sup>2</sup> The original of which will be filed under separate cover.

reservoir did not include the property on which Snyder has planned to build the C1 facility. On November 19, 1996, Snyder received a letter from the Water District agreeing to lease the site and an application was promptly filed. As Mr. Snyder states in his declaration, if the C1 permit is issued Snyder intends to promptly construct the facility.

III. **Heftel's Petition for Rulemaking is in Violation of 47 C.F.R. §73.207(a) and Should Not Have Been Accepted.**

Heftel's Petition for rulemaking contains a fatal procedural error in that it does not address the reference point already established for the C1 allotment to Mineral Wells. Section 73.207(a) of the Commission's Rules states: "the Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements of this section." Heftel does not propose a change of the C1 reference point specified in *Mineral Wells* ("North Latitude 32° 41' 06" and West Longitude 98° 09' 32"). However, all of the engineering showings submitted in the Heftel Petition were based on the existing transmitter site of KYXS, rather than the Channel 240C1 reference point. Indeed, Exhibit 1 attached to the Heftel Petition shows that the Jacksboro allotment on Channel 237A would be 15.3 miles short-spaced to the Channel 240C1 reference point at Mineral Wells.

It appears from the Heftel Petition that Heftel assumed that because KYXS was physically still operating as a Class C3 facility that its existing transmitter site was "authorized." It is not. In *Mineral Wells* at n.3, the *Report and Order* changed the reference point for Channel 240C1 to North Latitude 32° 41' 06" and West Longitude

98° 09' 32". The Heftel Petition proposes to change the allotment of Channel 240C1 at Mineral Wells to Channel 240C3, but it does not propose to change the reference point for the Mineral Wells allotment already contained in 47 C.F.R. §73.202. In so doing, Heftel made its engineering showing based not on the reference point for Mineral Wells presently contained in the FCC's rules, but rather on the physical location of KYXS. But the physical location of KYXS is not in compliance with the *Report and Order in Mineral Wells*. In the *N.P.R.M.* at ¶6, the Commission recognized this anomaly in stating: "We have taken no action regarding our earlier modification of the KYXS license to specify operation on Channel 240C1 and or our action amending the Table of FM Allotments to reflect a Channel 240C1 allotment at Mineral Wells."

In requesting the rulemaking to modify the license of KYXS to specify a C1 operation, Snyder agreed to modify its facility to specify a site that would comply with the reference point to be specified for Mineral Wells. Snyder applied and received a construction permit to operate as a C1 facility in compliance with this reference point. Subsequently, Snyder lost the availability of the proposed site.<sup>3</sup> On November 25, 1996, Snyder once again filed an application for modification of its permit to C1 status to comply with the *Order in Mineral Wells* (FCC File No. BPH-961125IG).

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<sup>3</sup> The history of this matter was set forth in a pleading filed by Snyder on February 5, 1997, entitled *Opposition to Petition for Rule Making*. At n.2 of the *N.P.R.M.* the Commission noted that it would consider this as Comments in this proceeding so these matters need not be repeated here.

The reference point for the C3 allotment at Mineral Wells, Texas was established in MM Docket No. 89-191, DA 89-628, released June 16, 1989 as 32° 48' 42", 98° 06' 11". This is not the reference point presently contained in the Table of Allotments for Channel 240C1 at Mineral Wells.

Thus, in failing to address the reference point for Channel 240C1 at Mineral Wells, Heftel apparently was relying on 47 C.F.R. §73.208(a)(i). If so, Heftel was mistaken in such reliance. 47 C.F.R. §73.208(a)(i) states: "First, transmitter sites if authorized .."). But as the Commission noted in the *N.P.R.M.*, Station KYXS is not operating at an authorized transmitter site. Station KYXS would be operating at an authorized transmitter site had Snyder been able to effectuate the construction permit issued to it by the FCC. Effectuation of that permit would have brought KYXS into compliance with the Channel 240C1 allotted reference point. The Channel 240C1 reference point for Mineral Wells has not changed, nor did the Heftel Petition propose that it be changed.

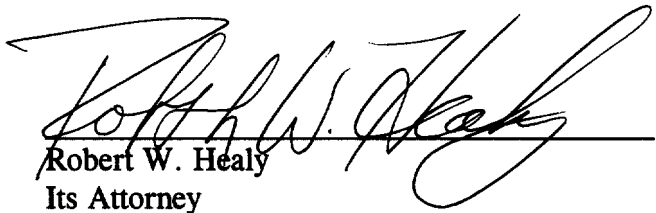
While Heftel bases much of the Petition on the need for a first local service to Lewisville, this fact does not excuse Heftel from strict compliance with its obligation to submit a proper separation study based on the reference point for Channel 240C1 Mineral Wells as presently specified in the FCC's rules or propose to change that reference point. Heftel did neither. Therefore its Petition should have been and now

should be dismissed for violation of Section 73.207(a) of the Commission's rules. *See, North Texas Media, Inc. v. FCC*, 788 F.2d 28 (D.C. Cir. 1985).

Respectfully submitted,

**JERRY SNYDER AND ASSOCIATES, INC.**

BY:

  
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Its Attorney

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May 5, 1997

**DECLARATION OF JERRY SNYDER**

My name is Jerry Snyder. I am president and owner of Jerry Snyder and Associates Inc. ("JSA"), licensee of Station KYXS-FM, Mineral Wells, Texas. In April 1992 the KYXS-FM license was modified, and the Table of FM Allotments amended, to specify Channel 240C1 as our operating frequency. Thereafter, KYXS-FM received a construction permit for Class C1 operation.

At the time JSA sought an upgrade for Station KYXS-FM, I was relying upon the availability of land for a transmitter site based on an oral commitment from the property owner. After our Class C1 construction permit was issued, the property owner died. I made a number of contacts with the owner's widow and his son, but they were not willing to discuss the matter while the property was tied up in the estate.

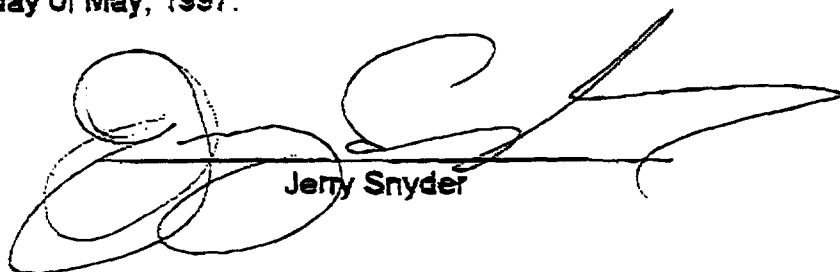
I tried to find an alternate site at which a tall tower could be located which would meet zoning and FAA requirements, but these efforts were unsuccessful. There are other tall towers near the original site JSA had proposed, and it appeared to be the only suitable location for the upgraded station.

Eventually, the estate sold the entire tract of land which included, as a small portion, the transmitter site for KYXS-FM's Class C1 facility. The new owner, the Palo Pinto County Municipal Water District, purchased the land for the purpose of constructing a reservoir. The water district did not need all of the land, but had to purchase all of it from the estate. I inquired of the water district's representative about a lease of the portion which JSA originally had planned to use for its tower. This arrangement was acceptable, and I made the necessary lease arrangements for the original transmitter site.

By this time KYXS-FM's C1 construction permit had expired, and it was necessary to file an entirely new application for the Class C1 facility allocated to Mineral Wells in April 1992. Such an application was filed on November 25, 1996, and it remains pending at this time (File No. BPH-961125(G)). Upon grant of JSA's pending application, JSA will immediately begin construction of the Class C1 facility, and thereafter commence service to the public with that facility.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Signed and dated this 5th day of May, 1997.

  
Jerry Snyder



**CERTIFICATE OF SERVICE**

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on this 5th day of May, 1997, copies of the foregoing were hand delivered to the following:

Hunt Broadcasting, Inc.  
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